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* PROFESSIONAL ETHICS.

THE ADVOCATE AND THE CLIENT.

The subject of our study to-day is "The Advocate and his Client." There are some duties which an advocate owes to clients at large as distinct from duties that he owes to the individual client in each case. Perhaps we may first consider one or two questions which have a bearing upon the former class of duties. It is the duty of every advocate, on account of the profession that he has undertaken to follow, to be well equipped for the discharge of his duties as an advocate, and therefore he should acquire the qualifications which are so essential to an advocate not only for his success in life but also in order that he may be able to discharge satisfactorily and faithfully his duties to the client world at large. I hope you will not be frightened by the enumeration that I shall have to make of the qualifications that a really good advocate should possess. To begin with, it is very necessary that an advocate should possess a good grasp of the general principles of law. His mind must be saturated with a correct knowledge of the basic principles. It would be impossible otherwise for him to be able to acquire at a moment's notice the necessary amount of knowledge on the particular points which he may have to deal with in any individual case. I shall in a future lecture perhaps deal with the question as to how law should be studied and what is the best method of acquiring a sound knowledge of law. It is sufficient at present to say that every advocate should do everything necessary to cultivate a sound legal instinct. The instinct can be cultivated only by making oneself master of the principles that have been established in various departments of law. It is hardly necessary to say that an advocate should understand the reasons which underlie legal rules. Otherwise he could not really master the principles of law. Not only is this necessary, but he should also understand the principles of legislation, for he has very often to get to the intention of the

* The fourth of a series of addresses delivered by the Hon'ble Mr. Justice Sundara Aiyar, one of His Majesty's Judges of the High Court of Judicature at Madras, to the apprentices of the year 1910-1911 at the request of the High Court.

legislature in framing particular provisions in statutes. The field of law is very wide and it is very desirable not to delude oneself with the idea that what is required can be looked up as occasion arises and that the numerous digests and text-books and reports could also be successfully appealed to at the moment for the knowledge that is necessary for any particular case. I can assure you that that would be impossible. Reports and digests have no doubt multiplied. But how few can really make a good use of them? Text-books we have in plenty. How many know what text-books are to be consulted and where appropriate references could be found? Moreover, an advocate is likely to be misled by citations that he may find in text-books which are made on the presumption that the student already possesses a knowledge of the principles of the particular system which the writer is dealing with. It not seldom happens that passages are cited which tell against the party citing them. They may appear to be in his favour, but when regard is had to the particular system of law with reference to which the writer has expounded the principles it would often follow that a very different conclusion should be drawn with respect to the system of law with which the advocate has to deal. It is, therefore, absolutely necessary that the leading principles of every branch of law must be studied beforehand. The habit of analysis has to be cultivated, for one of the chief functions of an advocate is to analyse the facts, to analyse the law, to analyse the case and the arguments of the opponent. An advocate has to learn to acquire the art of clear exposition. This is really one of the greatest gifts that an advocate can possess—to be able to make clear to the Judge, within a reasonably short time, the salient facts of a case and the principles that have a bearing upon them, separating the materials that have not any important bearing upon the particular question. It would be very useful if the beginner would reduce to a syllogistic form, for his own benefit, the arguments that he has to place before the court so as to test its soundness, for an analysis of that sort would be a very effective weapon when the fallacy of the arguments on the opposite side has to be exposed. But it is not enough for a practising advocate to have even a very good knowledge of law. His field of study has indeed to be very wide, in fact, one may say, practically unlimited. An advocate cannot with safety be wholly

ignorant of any branch of knowledge because the field of litigation is unlimited. There is a great necessity for scientific knowledge on his part. He has to grasp the principles of medical jurisprudence. They would very often be necessary in the course of his practice. For one class of cases a knowledge of the elementary principles of engineering would be required, *viz.*, when he has to deal with contracts with reference to work undertaken on roads, on canals, and so on. It is hardly necessary to say that he must possess a good knowledge of physiology; also of political economy, because he has to deal with the principles of landholding, principles of renting and valuation, and a number of other subjects which cannot really be grasped without a knowledge of at least the fundamental principles of political economy. Then, in patent cases and in copyright cases, a very great deal of technical knowledge would be required. With respect to copyright it is hardly possible to state what kind of knowledge an advocate may not sometimes require. Forsyth says:—"In cases connected with copyright there is no branch of the *belles-lettres,* Poetry, Music, History, which may not require the aid of the advocate to explore its merits and vindicate its rights! How infinitely varied are the questions which arise in dealing with the law of libel! If the defendant justifies the accusation he has made by pleading that it is true, on what a wide sea of investigation may it not be necessary to embark! The party attacked may be a divine, or a physician, or a soldier, and the inquiry at the trial will demand an acquaintance with the kind of knowledge peculiar to each profession. What shall we say of cases relating to the infringement of patents, which involve the discussion of intricate problems in mechanics and, even with all the aid which specifications, models and diagrams can afford, tax the powers of the understanding to the uttermost. And in trials for sedition and high treason, how indispensable for the due performance of the advocate's task is a memory well furnished with constitutional lore." A passage is quoted by Forsyth from a French writer—"What treasures of science, what variety of erudition, what sagacity of discernment, what delicacy of taste, it is necessary to combine in order to excel at the bar! Whoever shall venture to set limits to the knowledge of the advocate has never conceived a perfect idea of the vast extent of his profession.'

You know very well that an advocate has to cultivate extemporaneous speaking. Lucidity of style in speaking, we may perhaps put down as almost the most essential requisite that an advocate should possess. He must cultivate the power of quick arrangement of facts, because it will be his duty to present within as short a time as possible the main facts arranged logically and in such a manner as to produce a favourable impression on the mind of the Judge. If an advocate is not able to produce an impression within 15 minutes of his start, the chances are he would not succeed in producing any at the end of the day. There is no profession which requires so very hard work, continuous and sustained, as that of an advocate. Serjeant Wilde, who afterwards became Lord Truro, like other eminent advocates in England, was noted for his hard work. You will be probably appalled if you read the accounts of the amount of work which beginners in England, before they were able to achieve anything like success, had to go through. Serjeant Wilde, hearing that Follet had yielded to slumber when reading his brief at night in his circuit chariot, is said to have exclaimed impatiently : " Silly fellow! what can he want with sleep ? " Abraham Lincoln insisted on any person who resolved to succeed as an advocate, determining to be a drudge for a long time, because an advocate has to deal with the minutest details of a case to grasp every little fact, for there is no knowing, until he has mastered all, which fact may not be very material.

Then an advocate requires to possess great courage. He has often to meet extraordinary situations. He expects to be able to prove a case very clearly out of the mouth of a certain witness. The witness breaks down. The whole case seems to be going off. The advocate must be able to readjust his position. An unexpected mode of attack may be made on his case by the opponent. He must have the courage not to give way to despair but to be able to think out his position and readjust his arguments at a moment's notice. An eminent lawyer, W. R. Riddle of America, in delivering an address to the Bar Association, spoke of the necessity of courage in these words:—" This courage is not the courage of a prize-fighter, nor of the bully, but is the courage that will tackle every problem or question presented; investigate it, find out the whys and the wherefores, the ins and outs, the pleasing features as well as those that are disagreeable, and

then stand by your guns. Cowardice is usually the result of ignorance, as Emerson says.

" The lawyer who is armed with the facts with all their bearings, and who is capable of applying the law to the satisfaction of his judgment, is thrice armed and armed with a weapon that his adversary will fear "

"Our doubts are traitors, and make us lose
The good we oft might win by fearing to attempt."

" The great defect with too many who join the profession is that they are indolent and indifferent in their investigation, not only as to the facts, but as to the law. Many of them like to lean on older or more capable lawyers. Many like to succeed through the flattery of the Judge or suavity which is better expressed by the term blarneying, or by eloquence. But where one succeeds through such methods, hundreds fail. For true success at the bar can only be attained by satisfactory knowledge of the facts and the law."

Let me remind you that success generally depends upon high character—character both in public and private life. You are apt to imagine that high character may sometimes stand in the way of success, but you may be sure that it brings success in the long run. The same eminent lawyer said :—" Reputation is important, and it has been well said that a young man who can honestly say that he does not care what people think of him is not far from ruin. Still character is better than reputation, and character gives reputation as a rule. Character can never be attained without self-denial nor without study of self. A man of character always studies to appreciate the relations that exist between himself and others, and character to a lawyer gives confidence ; it brings clients, it aids in influencing the jury and court. In fact it is indispensable to a successful lawyer."

As pointed out in the above passage, nothing like character secures the confidence of the client and the court alike. I should warn you against being discouraged by the enormously high qualifications that I have mentioned as being required for success as an advocate. There are advantages that he possesses. Cicero is reported to have said :—" In every case which he undertakes, the advocate has at his command the services of those who are interested in the result, and who

procure for him information from every available source. Those who have devoted years of toil and study to some particular department of art or science, exhaust as it were their treasures before him; and transfuse into him, for the time, the knowledge which they possess. It is his duty to employ skilfully the materials which are provided for his use, and weave them into a plain and perspicuous statement, so that they may be presented to the minds of the court or jury in a clear and intelligible form. If the most ingenious mechanician, unaccustomed to the art of speaking, were to rise in a court of law to assert or deny the infringement of a patent, the chances are that he would not succeed in making himself understood. And this is one of the many reasons why, independently of legal mysteries, it is necessary that 'masters of the art of tongue-fence' should exist in every civilised community." You will often find that abstruse scientific doctrines are sometimes much better expounded by the eminent practising advocate than by doctors of science. There is another advantage that an advocate possesses. He has got his reputation at stake. He has got every motive to help him in order to acquire thoroughly the principles of any particular science that may become necessary for the exposition of a case. A feeling of duty, the stress of necessity and anxiety for success are there to help him. But unflinching determination to get to the bottom of every case and to master thoroughly everything that may be required—not merely absolutely required, but everything that may become necessary in the course of argument—that is the desideratum. If an advocate will master everything that it will be desirable to study for every case that he has to argue, then there is no field of knowledge that an advocate who has good practice will not be able to master in the course of a long practice. But it is with the profession of an advocate, as with every other profession, that if one is anxious only to be done with the work of the day without being exposed, if one is content to do it perfunctorily, if one is satisfied with what he considers absolutely necessary for the conduct of his case, then the profession will not lead to the acquisition of that culture which is sure to come to every advocate who does his duty. There are many questions which would occur in the course of the advocate's practice where a knowledge of English precedents would be required. Now before you can cite English

precedents make sure that you study the praticular branch of English law thoroughly to which the precedents relate. Only then will you be able to cite any precedent with safety. Only then will you be safe from inability to answer questions that may be put by the court with reference to the applicability of the precedent to this country. It sometimes happens to an advocate who has to argue a case which is out of the way that he has to study whole volumes for the purpose. Take for in- tance a litigation with respect to a zemindari, a question whether it is divisible, or a question relating to tenures within the zemindari. It might be that the history of a part of the country for 200 years or 300 years may have to be studied, and that history may have to be gathered from many volumes. The advocate should not shrink from the task.

It follows from what I have said that it is indispensable that an advocate should not neglect culture. In no profession indeed is general culture so very necessary as in that of an advocate. It may not be possible for an advocate whose own special duties are of a very strenuous character to acquire a deep know- ledge of many branches of learning. Therefore try to make a fairly good study of current periodical literature. The progress of knowledge is marked in the periodical literature of the day. The results of the latest research are summed up in a short compass. It is hardly necessary to say that an advocate, in order to be able to discharge his duties by being able to study his case within a reasonable time, should possess a good library. That is not easy. But it would be possible for most to obtain access to good libraries. It is also desirable that you should systematically preserve the knowledge that you have acquired by cultivating the habit of making notes not merely of the principles of law and precedents but also of knowledge that you acquire in other branches of learning.

While I am making these remarks, probably the question has occurred to many of you : How few would require all this? How many do achieve success which would require such wide knowledge? But success is open to many though it may not come to all. And a moderate measure of success will be the part of many of you. But, however that may be, it is the duty of an advocate to be prepared to meet good luck, to be ready for the

day when good fortune comes to him. If he is not prepared to take advantage of it, it may not come again. I must say that in this respect junior advocates in this country are not putting forth anything like the energy that they ought to or doing anything like the work that is turned out by briefless men in England. One who determines to succeed in life in England makes a thorough and systematic study of law and everything else that success as an advocate requires, whether he has any work or not. There are numerous instances of persons who have risen to the highest position in the bar and in public life who pursued their studies with very strenuous industry at a time when they had absolutely no briefs, who wrote treatises in law which took their places as legal classics before they had a single brief, who pored over volumes after volumes to await the day that they would be able to argue their first case. It is too often the practice in this country to postpone all study until cases come that require study, and I am afraid the result often would be that cases are long in coming.

There is one other question which we may take up before we deal with the duties of an advocate to individual clients, a question of great difficulty regarding which the greatest advocates are not agreed in their opinions—Is an advocate bound to take up every case that is offered him? Another phase of the question is—Is he justified in taking up every case that may come in his way? Opinions on this question have differed in England and in America. European countries generally take the view that American lawyers do. American lawyers are disposed to treat the profession of law like every other profession, where a person may do what business he likes and with whom he likes. That is reducing the office of an advocate pretty much to that of a trade. On the other hand you will find English lawyers stating that an advocate is bound to give his help to every one who goes to him, whatever the nature of the case may be; that it is his duty to place at the service of every litigant who is not able to conduct his own case the learning and the power of exposition that he has acquired. So far as England is concerned we may take it that the rule is fairly well settled. The latest pronouncement of the English Bar Association, I think, on this matter was in 1903-04, in the report of that year. The following question was put by a barrister to the Council:—"I shall be glad if you

would kindly inform me whether a barrister is bound to accept any brief which may be offered to him and, if so, what penalty or punishment would he incur in consequence of refusal ?" The answer was this:—" The general rule is that a Barrister is bound to accept any brief in the courts in which he professes to practise at a proper professional fee. Special circumstances may, however, justify his refusal to accept a particular brief. Any complaint as to the propriety of such refusal, if brought to the notice of the General Council of the Bar and by them considered reasonable, would be transmitted by them to the Benchers of the Inn of Court of which the Barrister is a member." A few principles, I think, may without much hesitation be laid down:—That the office of an advocate should not be treated like the profession of a trader or a business man. An advocate is an officer of the court. He is appointed to help people who require the aid of a trained man. It will be a degradation of the office to treat it as similar to a trade.

What qualifications the rule requires, we shall consider. We may say no client should be shunned because he is opposed to a man of influence, or because he has incurred social opprobrium, or is opposed to the officers of Government, or to society at large. He may be a noted dacoit ; he may be one who has done disservice to the community in many ways. It may be that the client—he or she—may be an undesirable person. I have no hesitation in telling you that that alone should not be a reason for refusing your help to a litigant. You may sometimes incur social opprobrium by doing so, but that is a misfortune which you must be prepared to face. At a meeting in Carnarvon some years ago a resolution was passed calling upon temperance men not to support any candidate who acts professionally as counsel for the liquor trade at licensing stations. This was condemned by the English *Law Times* as interfering with the duties of an advocate. The public unfortunately do sometimes identify an advocate with the client for whom he appears. He is bound by the solemn declaration he makes when he undertakes the office of an advocate, to serve the client whose cause he agrees to advocate, and every advocate is entitled at the hands of all persons that they should not hold him responsible for what in the honest discharge of his duty he is bound to put before the Courts of Justice. It may happen to any one of you that you

may lose private friends in the discharge of your duties. It may cost you close and intimate friendships. In my opinion, that would be no defence to your declining to undertake the task. There are circumstances in which you may be entitled to prefer one side to another. Friendship may be a reason for undertaking the advocacy of one side rather than another. But your friend may not be either of the litigants; he may desire that one party should win rather than another and his desire may be that you should not undertake to espouse one cause at all events though you may not be engaged on the other side. I believe there can be no doubt that it would be wrong to refuse to accept a brief simply because certain persons in a position of influence or attached to you by ties of relationship or friendship should desire that you should not lend your services to a particular litigant. The rule in England, which I have already referred to, is subject to some qualifications. If an advocate has previously advised the opposite side he is not bound nor would he be justified in taking up a brief. If he does not get a proper professional fee he would be entitled to decline. In England there are very elaborate rules as to what a proper professional fee is. We shall come to the conclusion when we study that subject that it is not a proper thing for an advocate to place an exorbitant value upon his own services or to rate his services as he likes on each occasion simply because he is likely to get a larger fee if he presses for it than he would reasonably be entitled to.

It is proper for an advocate to confine himself to a particular kind of business. In England the rule now is to specialise. The field of law has become so wide that it is not easy for a person to master all departments of law; many eminent lawyers confine themselves to particular branches of law. Of course it would certainly be proper to refuse a brief on the ground that the advocate does not undertake cases of a particular kind. He may also plead, as justifying a refusal to accept a brief, that he does not practise in a particular court. In criminal cases in England the Crown is entitled to demand the services of any advocate. So if the Crown requires his services that would be a reason for not accepting the brief of an accused.

Now there has been a great deal of controversy and difference of opinion as to whether an advocate may refuse to undertake the defence of an accused in certain circumstances. The

result you may take to be this. An advocate has no right to require that he should be satisfied of the innocence of a client before he undertakes his defence. It is not his business to judge but the business of the court. But a more difficult question is—suppose he is convinced that the accused is guilty. Is he then justified or bound to agree to defend him if called upon to do so. The trend of English opinion seems to be that he is, because it is a principle well acknowledged that no man shall be convicted unless he is proved to be so; and if a person is entitled to demand and a Judge is bound to hold that whatever moral certainty there may be about his guilt he shall not be condemned unless the case is proved against him according to the forms of law, is there anything wrong in the advocate undertaking the defence of that client to see that the evidence adduced is legally admissible, that the accused is not prejudiced by anything contrary to the procedure that has been laid down and that the Jury pronounces its verdict upon proper legal materials. If there is nothing wrong in his doing so, then the further question is,—Is it also his duty to do so? If it is not the duty of one advocate, it is the duty of none. The result, of course, of laying it down that if an individual advocate is convinced that an accused person is guilty,—not by personal knowledge, mind you, but upon materials placed before him,—he is not bound to defend, is that the best advocates probably would refuse their services to a criminal whose guilt they believe in. Is this right? If a Judge is bound to acquit—notwithstanding that he feels quite convinced morally that the man has committed the offence—is not the duty of a person who follows the profession of advocacy to place his services at the disposal of an accused person so as to see that the legal requisites of condemnation are fulfilled. Of one thing I believe there ought to be no doubt, that if an advocate has personal knowledge, knowledge which would enable him to be a witness, though he may not be cited as one, the advocate should not accept such a case. We have to convass this matter at some length because I am sure, to the end of your lives as advocates, this question would be vexing you.

NOTES OF INDIAN CASES.

Thiyagaraja Pillai *v.* **Ratnasabapathy Pillai**—I. L. R. 34 M. 284.—We have some doubts as to the correctness of the decision in this case. There were two points decided in the case, one of which related to a question of the construction of a compromise and the other to a question of limitation. Even on the question of construction we have doubts as to the correctness of the decision. The learned judges hold that it is a joint trusteeship, overruling the contention that a right in severalty is created. We do not think it creates a joint trusteeship in the Hindu Law sense of the term. The document in question declares that the trusteeship is to vest in two branches, *viz.*, the plaintiff's and the first defendant's. The document then provides that the plaintiff's right shall, after his death, be exercised by his heirs, and the first defendant's shall be exercised by him and by the second defendant, and after the death of both of them by their heirs.

When the trusteeship is to descend to the heirs, it cannot go by survivorship. A joint trusteeship under the Hindu Law will go by survivorship to the surviving male members of the family and will not descend according to the laws of inheritance. We do not find any provision about enjoyment by turns. We suppose that what the learned judges meant was that the persons were co-trustees and in that sense there was a joint trusteeship.

The learned judges hold that when one of two joint trustees is barred, the other joint trustee is also barred. We do not think this can be held to be a universal principle of law. In the case of joint trustees, if the right of one joint trustee is barred the right of the other is not necessarily barred. Only when possession is adverse to both, limitation will run against both. In such a case the question might arise whether, if limitation had fully run out against one but had not run out against the other on the ground that the latter was under disability, such latter would also be barred. In the case of mere co-trustees the office is a joint office so that their duties must be executed jointly. We think it is only in this sense we can understand the expression 'joint trustees'; at any rate it is only in this sense it is understood in the English Law. A receipt by trustees according to English Law must be the receipt of all—*Encyclopædia of the Laws of*

England by WOOD RENTON, Vol. XIV, 'Tit,' Trusts and Trustees, p. 307. However numerous the trustees in the case of a private trust, the act of a majority will not be effectual. In the case of a public trust, however, the act of the majority is held to be the act of all, and even in that case a majority cannot, in the absence of express statutory authority, pass the legal estate which is vested in all—see *In re Ebsworth and Tidy's Contract* [1]. An acknowledgment by one trustee is not an acknowledgment by all so as to prevent the operation of the Statute of Limitation—*Richardson* v. *Young* [2]; *Astbury* v. *Astbury* [3]. In a case reported in the *Bombay Law Reporter,* however, it has been held that in the case of religious or charitable endowments, it is permissible for one trustee to pass receipts for rents or dividends. Apparently this is put upon the ground of authorization as in the same case it is said that if the other trustees withdraw the power of one of their numbers and inform the person who has to make the payment of such withdrawal of power, the receipt signed by that one may not be binding on the others—*Rambabu* v. *Committee of Rameshwar* [4]. Even if this decision were right it is no authority for the view that one trustee can give a discharge for the others. Similar principles must hold good in the case of joint trustees under the Hindu Law sense of the term. We, therefore, think that the decision in the case under notice requires reconsideration.

Kandukuri Mahalakshmamma Garu *v.* The Secretary of State for India in Council.—I. L. R. 34 M. 295.—The decision in this case, known more familiarly as the *Urlam Case,* is of far-reaching importance. The right of the Government cannot, we conceive, be put higher than by the High Court in this case. There can be no meaning in a permanent settlement if the Government can indirectly claim to tax a zemindari in other ways. If it is intended by the settlement that the zemindar should take the benefit of the increase in revenue consequent upon fresh land being taken up for cultivation or becoming fit for improved cultivation by the zemindar making improvements as regards his irrigation sources, it is not giving effect to any such intention if the Government can increase the peishcush by claiming to charge for the increased

1. (1889) 42 Ch. D. 23.
2. (1871) L. R. 6 Ch. 478.
3. (1895) 2 Ch 111.
4. (1898) 1 Bom. L.R. 667.

cultivation. The learned judges, therefore, apparently suggest that the settlement of the peishcush was with reference to the area then cultivated and not with reference to future contingencies, and that, apparently, the onus lies on the zemindar to shew that the fixing of the settlement was with reference to future contingencies. This is apparently what they mean when they say :—" We do not think we can, from the non-reservation of the beds, presume anything more than that the Government fixed the revenue with reference to the extent of land under irrigation at the time. We have none of the permanent settlement accounts before us and no evidence that the peishcush of the zemindari was fixed with a view to any possible extension of irrigation." This is contrary to what has been hitherto regarded as a feature of the permanent settlement, and we should think, if the Government had the right, the onus should be placed upon them to shew that they had the right to raise the revenue upon any particular ground relied upon by them. We think it is a familiar principle that a grant of land conveys with it the right to the water in it and if there is a flowing stream or other water-course it must be taken to be the right of a zemindar to use the water in the stream flowing in his land. He must be held to have a right to use the water for lands other than those watered at the time of the settlement subject only to the riparian rights of others. If the Government had the right of distribution as claimed when it grants certain lands it must be taken to have parted with such right of distribution also to the grantee so far as the land, the subject of the grant, is concerned. This view of the matter has not been noticed in the cases which have cropped up of late on the subject.

Some reference is made to Madras Act III of 1905. The declaration in S. 2 that subject to easement and natural rights of other landholders all standing and flowing waters which are not the property of any one else are the property of the Government cannot be taken to mean that the presumption is that any particular "standing and flowing water," is, in the absence of evidence to the contrary, the property of the Government. We do not propose to discuss the matter further as we understand the decision has been appealed against to the Privy Council.

SUMMARY OF ENGLISH CASES.

Central London Railway Company *v.* City of London Land-Tax Commissioners.

[1911] 2 Ch. 467 (C. A.)

Presumption of ownership of road 'ad medium filum'—Application to cases of redemption of land-tax—Origin of the presumption.

There is no reason why the presumption that a messuage adjoining a highway extends *ad medium filum*, should not apply so as to make the redemption of land-tax over a holding include that portion of the road also. The result is that even when tunnels or tubes are run under the road, fresh tax cannot be laid thereon when once there has been a redemption of land-tax.

Farwell L. J. *per contra* held that the presumption applies only to grants and cannot be extended to statutory acts unless they amount to grants.

Per *Cozens-Hardy* M. R.—As to the origin of the presumption various theories have been stated. In *Doe* v. *Pearsey* [1], *Bailey* J. said: "The rule is founded on a supposition that the proprietor of the adjoining land at some former period gave up to the public for passage all the land between his inclosure and the middle of the road." But this does not appear to me to be satisfactory, for the presumption extends equally to a stream which divides two properties—a case to which *Bailey* J's. explanation would not apply. Moreover, it extends also to a road or stream which divides two parishes. In *Doe* v. *Pearsey*[1] a different and more satisfactory explanation was suggested by *Littledale* J. who said: "We do not know the origin of these rights. In all probability the rule that the presumption is to be in favour of the owner of the adjoining land has arisen from its being a matter of convenience to the owners of adjoining land, and to prevent disputes as to the precise boundaries of property.." * * Whatever be the origin of the presumption, its existence cannot be disputed. * * It is not a mere conveyancing presumption * * This applies to a contract to sell the house, to a grant of the house and to a lease of the house. * * It applies

1. (1827) 7 B. & C. 306.

also to a devise of the house. I cannot suggest any legal instrument to which the presumption would not apply. * * In my opinion the presumption would equally apply in favour of a person who acquires a title to the house under the Statute of Limitations.

Per *Farwell* L.J.—The rule is a corollary of the rule for avoiding disputes between neighbours which assumes that the owners of land adjoining an ancient highway originally gave each a moiety of the land necessary to make the road which enured for their common benefit. * * But the rule is a mere rule of construction. * * In my opinion * * a trespasser who acquires a possessory title to land or house abutting on a highway acquires no title to the soil of such highway; the commencement of his possession since the highway was made rebuts the presumption that he was the original maker and he has nothing in the nature of a grant from which any presumption of title in him can be inferred.

Cope *v.* Burnett. [1911] 2 Ch. 488.

Assignee of administration bond—Suing in representative capacity not essential—Assets recovered to be assets in administration.

The assignees of an administration bond may sue in their own names provided they sue for the benefit of the estate and need not describe themselves as suing on behalf of the estate. The moneys that they recover will be assets to be dealt with in due course of administration.

In re Lord Nunbernholme: Wilson *v.* Nunbernholme. [1911] 2 Ch. 510.

Will—Legacy—Vested or contingent—Devise of property at age of 26 with accumulations and gift of part of income in the interval—Vested legacy.

A testator bequeathed certain shares in a company upon trust to pay a portion of the income to his son annually until be attained the age of 26, and on the happening of that event to hold the shares and the accumulations absolutely

for him. There was no gift over. Under the circumstances *Neville* J. held that the son took an absolute vested interest in the shares and not merely a contingent interest. In arriving at this conclusion his Lordship applied the reason of the rule by which gift of a legacy to a legatee on attaining a certain age accompanied by a gift of the whole of the income in the meantime vests the legacy absolutely in the legatee notwithstanding the contingency imported by the terms of the gift. The rule is founded on this : that there has been an indication on the part of the testator to give the whole benefit of the legacy to the legatee notwithstanding the provision that *prima facie* indicates that the capital is only to be vested at a particular age. Although in this case only a portion of the income was given to the son for his use, as the accumulations also were finally to go to him he had the absolute benefit of the shares, and it was proper under the circumstances to hold that the legacy vested in him at the date of the testator's death.

Hall *v.* Burnell.

[1911] 2 Ch. 551.

Vendor and purchaser—Deposit—Rescission of contract for vendor's default—Destination of.

The vendor is entitled to the deposit amount when a contract of sale is rescinded for the default of the purchaser. The judgment of *Farwell* J. in *Jackson* v. *Dekadich*[1] is based on a misapprehension of *Howe* v. *Smith*[2] where the learned judge thought there had been no rescission whereas, as a matter of fact, there had been. A deposit is in the nature of a guarantee for the due performance of the contract. The implication is the same, whether it is paid to the vendor direct or to a third party as a stakeholder.

In re **Meter Cabs, Limited.** [1911] 2 Ch. 557.

Solicitor's lien — Company—Costs of establishing right of retainer—Winding up.

A solicitor was employed to establish the claim of a limited company in an arbitration. Pending the arbitration, the company

1. (1904) W. N. 168. 2. (1884) 27 Ch. D. 89.

went into liquidation. With the sanction of the liquidators the solicitor compromised the claim.

Held: that the solicitor had a lien on the amount recovered for all his costs including the costs of establishing his right of retainer against one of the liquidators who disputed it. The solicitor's lien prevails notwithstanding the bankruptcy of the client.

"Carvino" Trade Mark, *In re*: [1911] 2 Ch. 572.

Passing off action—Evidence—Trade-mark used as a part of a deceptive get-up—Application for cancellation of registry—Not granted when itself not calculated to deceive.

In a passing off action where it was alleged that the defendants, by the deceptive get-up of their goods passed off their goods as those of the plaintiffs, the Court of Appeal held that there was an entire absence on the part of the defendants of any intention to deceive, and in the absence of any evidence of actual deception it was impossible for the court to draw the judicial inference that the two get-ups were so alike as to be calculated to deceive.

Per *Swinfen-Eady* J.—When a trade-mark by itself is not one calculated to deceive, that it has been used as a part of a deceptive get-up, the use of which has been restrained in a passing off action, is ot a ground for cancelling the registry of the trade-mark.

In re **Willis: Spencer** *v.* **Willis.** [1911] 2 Ch. 653.

Will—Devise of landed property—Acquisition of adjoining land between date of will and death of testator—Extent of devise.

A testator devised to his wife "all that my freehold house and premises situate at Oakleigh Park * * and known as Ankerwyke and in which I now reside." In the interval between the making of his will and his death he added to the property by purchasing two plots of adjoining land. One of the plots was contiguous to the plot on which the house was built; the other was on the opposite side of the road. Two questions arose: First, one of construction: Was the gift of the house and premises limited to that part of the property which constituted the house and

premises in the occupation of the testator at the date of the will, or did it extend to include all that constituted the house and permises at the date of the testator's death? Second, a question of fact: What was the subject-matter of that gift?

On the first question, following the judgment of *North* J. in *In re Champion*[1], *Eve* J. held that the words "in which I now reside" were a mere additional description of the property and were not a vital or essential part of the description having the effect of cutting down the generality of the earlier words, and that the devise extended to the entire house and premises known as Ankerwyke at the date of the testator's death.

On the second question: the plot across the road he had purchased in order to prevent an erection of a house there, and had subsequently converted into an ornamental garden with a tennis lawn and of the other plots also he was in occupation as a portion of his premises. Even if the devise was only of "the house," that description would have passed all that was necessary for the convenient use and occupation of the house. In this case, the devise being of the premises as well, it was held that all the plots in question passed under the devise.

In re **Tewkesbury Gas Coy: Tysoc *v.* The Company.**

(C. A.) [1912] 1 Ch. 1

This was an appeal from the Judgment of *Parker* J. in (1911) 2 Ch. 279 which is affirmed by the Court of Appeal. For the points involved *see* 21 M. L. J. 442.

In re **Atkinson and Horsell's Contract:**

[1912] 1 Ch. 2.

Title by adverse possession—Purchaser bound to accept.

Title by adverse possession is a good title and can be forced on an unwilling purchaser in a suit for specific performance of a contract for sale.

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1. (1893) 1 Ch. 101, 107.

Royal Warrant Holders' Association v. Edward Deane & Beale, Limited. [1912] 1 Ch. 11.

Use of Royal Coat of Arms—"User," meaning of—Question as to belief—Admissibility of—"Calculated to lead to the belief."

By S. 68 of the Trade Marks Act, 1905, if any person, without the authority of His Majesty, uses in connection with any trade, business, * * * in such a manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms * * * he may be restrained by injunction * * from continuing so to use the same." The defendants were a firm of Engineers. A cast iron representation of the Royal Coat of Arms was fixed on the front of the premises. The defendants had not themselves fixed it there. It was there long before they took over the premises, in all for over 30 years. The defendants were acting in good faith on the belief that they could lawfully use it In an action under the Act to restrain the further user of the Coat of Arms: *Held* (i) that the defendants were using the Coat of Arms within the meaning of the Act although they did not introduce it, (ii) in a manner calculated to lead to the belief that they were authorised to use them. In the course of the trial, a question was put to a witness in examination: "What was the conclusion in your mind arising from the fact that defendants exhibited the Royal Arms on their business premises?" *Warrington* J. held that it was admissible on the analogy of questions permitted in passing off cases, *e.g.*, "Did you believe that the defendant's goods were the plaintiff's?"

In re **Vander Leew's Trade Mark.** [1912] 1 Ch. 40.

Trademark—Use of Spanish brand—If calculated to deceive by suggesting false origin—Question of fact.

It would be going too far to hold that every Spanish brand name for cigars made in a country where Spanish is not spoken must contain a false suggestion and is calculated to deceive. It is a question of fact in each case whether it does or does not raise such a suggestion, and only if it does, should registration of the trade mark be refused.

In re **Richards.** [1912] 1 Ch. 49.

Solicitor—Costs—Mistake—Costs of taxation.

When the bill of costs furnished by a solicitor contains an error due to a *bona fide* mistake on the part of the solicitor or has clerk, and the client, instead of asking the solicitor to correct the mistake, goes to the master to have the costs taxed the court has discretion to direct the client, under the circumstances, to bear the costs of the reference though the solicitor should pay whatever extra costs were occasioned by his blunder.

In re **Clifford: Mallam** *v.* **Mcfie.** [1912] 1 Ch. 29.

Will—Construction—Speaking from the date of bequest—Ademption.

A testator bequeathed to his trustees "23 of the shares belonging to him in the London and County Banking Company, Limited, upon trust for the benefit of certain legatees at the date of his will." He possessed 104 old 80 £ shares with 20 £ paid in the London and County Banking Company. Between his will and his death the Company changed its name. The capital was increased and new capital was issued. The old capital was subdivided by changing each old 80 £ share with £ 20 paid into 4 new 20 £ shares with 5 £ paid. The testator's shares were subdivided accordingly. On these facts the residuary legatees contended that the bequest spoke from death and only passed 23 new £ 20 shares; in the alternative they contended that if the bequest spoke from the date of the will and referred to the old £ 80 shares then existing, it was adeemed as those shares had disappeared before the testator's death. *Held*: the circumstance that it was a specific bequest required that the will should speak from the date of the execution and not from the date of the will, and as the 23 shares bequeathed changed in name and form only, but substantially existed in their sub-divided form, there was no ademption and the legatee was entitled to 92 shares of £ 20.

Societe Coloniale Anversoire *v.* **London and Brazilian Bank.** [1911] 2 K. B. K. O. 24.

Principal—Banker—Account opened in bank in name of agent—Revocation of agent's authority—Liability of banker to pay balance to prinsipal.

A principal who places money in the bank on the terms that a known agent shall draw on it retains the power, if he rightly determines the agency, to require the bank to return the undrawn balance to him.

In re Oshea: *Ex parte* Lancaster.

[1911] 2 K. B. (C. A.) 981.

Bankruptcy—Proof—Guarantee to bank to enable debtor to pay bets lost—Gaming debt—Illegal consideration.

A debt arising out of a loan for enabling the debtor to pay a bet which he had made and lost not being for an illegal consideration could be proved in bankruptcy.

A lent *B* certain sums in 1903 to enable him to make bets on horse races upon terms that *A* should have half the profits which might be made by betting. *A* gave a guarantee to a bank to secure some overdraft which also was for the same purpose. But *B* owed a sum of 500 £ to another. *A* guaranteed a further overdraft for the amount to enable *B* to pay the debt. In 1906 *A* paid the bank the amount due under his guarantee, brought a suit against the debtor *B* and recovered judgment. *A* presented a bankruptcy petition against *B*. The petition was dismissed by the Registrar on the ground that there was no valid debt. *Held* that the transaction was not invalid as regards the guarantee debt of 500 £.

McCarthy *v.* Capital and Counties Bank.

[1911] 2 K. B. (C. A.) 1089.

Practice—Costs—Bankruptcy of creditor—Notice to debtor—Refusal to pay debt—Action by creditor—Payment into court—Debtor's right to costs of action.

Plaintiff committed an available act of bankruptcy of which the defendant, a debtor, had notice. Nevertheless plaintiff sued the defendant for an undisputed debt and the defendants at once paid the money into court under an order made upon their application. *Held* that the defendants were entitled to the costs of the action including the costs of the application to pay into court.

Rex *v.* Banks. [1911] 2 K. B. 1095.

Criminal law—Pleading—Right to plead 'autrefois acquit after plea of not guilty—Double plea.

Two persons (the applicant and another) were charged upon a Coroner's inquisition with the murder of a child and they pleaded not guilty, and the appellant also pleaded not guilty to a charge of manslaughter. Counsel for the prosecution did not offer any evidence upon the Coroner's inquisition for murder stating that there was an indictment for manslaughter. The jury returned a verdict of not guilty of murder on the inquisition. Before the jury were sworn to try the indictment for manslaughter the appellant handed in an additional plea of *autrefois acquit.* The appellant was tried first upon that plea and the jury found against the appellant on that plea. He was then tried and convicted. On appeal against conviction on the ground that the plea of *autrefois acquit* was good : *Held* that the defendant having pleaded not guilty to an indictment was not entitled to plead *autrefois acquit* so long as the plea of not guilty was on the record.

Cooke *v.* Rickman. [1911] 2 K. B. 1125.

Estoppel—Res judicata—Action for rent under agreement—Judgment for sum due—Second action—Plea—No consideration for agreement.

When in a suit for rent under an agreement plaintiff obtained judgment for the sum actually found to be due, a second action before an inferior court having jurisdiction for further rent under the same agreement would not lie and the defendant could not raise the defence that there was no consideration for the agreement.

JOTTINGS AND CUTTINGS.

The Late Mr. V. Krishnaswami Iyer.

REFERENCES IN THE MADRAS HIGH COURT.

THE ADVOCATE GENERAL (Mr. P. S. Sivaswamy Iyer) :—My Lords,—It is with feelings of profound sorrow that I have to announce to your Lordships the sad news of the untimely death of the Hon. Mr. Krishnaswami Iyer. He was connected with this

court as a member of the profession for well-nigh a quarter of a century, and as a Judge he was connected with it for a little over a year. There is probably no one in this court who can claim to have known him for a longer period than myself. Our friendship commenced so far back as 1877, when we were class-mates in the High School at Tanjore. From his boyhood he was marked out for success in life. He had a distinguished career in the school, and at College and in the University. He was enrolled in the year 1885, and, like the vast majority of those who entered the legal profession, he had also to undergo his struggles. But opportunities soon presented themselves and with his talents he had no difficulty in pushing his way ahead. An extraordinary vigour and quickness of intellect, a sound knowledge of legal principles, a keen insight into human nature, and a never-failing resourcefulness, a pluck that recognised no difficulties except to overcome them, an exuberant energy and a robust constitution, gifts of speech of a very remarkable order, and last but not least, a high character—these were the qualifications which he brought to bear in the exercise of his profession. He had all the qualifications necessary to achieve eminence at the Bar. As a good all-round Advocate, I know of none superior to him here and he soon won the foremost position in the Bar. It was with feelings of great gratification to the profession that we received the news of his elevation to the Bench. His career as a Judge was rather short but the quickness with which he grasped the points of a case, the quickness with which he disposed of cases, were remarkable, and I am sure that if he had been spared longer on the Bench he would have left permanent marks in the pages of the Law Reports and in the annals of the administration of justice. If some of my young friends here think that he carried to the Bench some of the traits of a masterful temperament, they also know that no new point ever failed to obtain a hearing and any sound contentions put forward always had a ready hearing.

My Lords,as a Member of the Legislative Council his work was highly appreciated by the Government, his abilities were recognised by the Government and his appointment as a Judge of this Court was the immediate result of that recognition and that led the way to further preferment. His elevation to the Executive Council was the highest preferment that could ever be gained by an Indian in this country and we all hoped that though his services were lost to the court, he would continue to serve the Government for the full term of his office of Councillor with great benefit to the Administration and benefit to his own reputation and fame. These hopes, however, have been cruelly frustrated.

My Lords, his activities were of a varied character. They were not confined to the legal profession. In the University his advice and help were of the most valuable character and as one who has seen his work in the Syndicate of the University, I venture to say that the services of no one have been more valuable or more helpful to the University. His advice and guidance to the younger generation were most valuable. His judgment of men and affairs was generally sound. He took an active part in the public life of this country and did his best to direct public opinion into right channels. Whatever movement there was in this country that had a chance of contributing to the welfare of the people enlisted his sympathy. Whether it was the cause of Sanskrit learning or whether it was the cause of Oriental Medicine, or whether it was the cause of the Hindu University, or whether it was an economic movement, every movement that had any likelihood or bore any promise of contributing to the prosperity of the people found in him a generous supporter. In private life he was a warm-hearted friend and exceedingly generous Of his generosity there are ample proofs and those institutions which owe their existence to him will continue to be enduring monuments of his philanthropy, generosity and sound judgment.

My Lords, by his death the country has lost a patriotic and public-spirited citizen of high aims and earnest endeavour, the Government have lost one of their most valuable Councillors, the cause of learning has lost a munificent patron, and to his innumerable friends all over the Presidency his death will be a cause of deep sorrow and it will be difficult to fill his place again. My Lords, we wish to convey to the members of his family, through your Lordships, our humble sympathy with them in their bereavement.

C. F. Napier, Public (Prosecutor).—My Lords,—On behalf of the Barristers, Advocates and Solicitors of this court, I would like to be allowed to add a few words to what my learned friend the Advocate-General has said. My Lords, it seems to me that we are, as it were, in the face of a sudden calamity, because, although we knew that the late Mr. Krishnaswami Iyer was not of so robust a strength in health as his intellect was robust and vivid, yet it seemed almost impossible that that intense and eager personality which we all knew so well should now be stilled in death. My Lords, the late Mr. Krishnaswami Iyer was known to us all here in three capacities—as Advocate, as Judge and as Member of Council. I will not speak of his wonderful gifts as an Advocate, because they were indeed but the stepping stones from which he rose to higher things. Your Lordships cannot

fail to remember the effect when he rose to the Bench. His vivid personality was there on the Bench, just as it had been at the Bar. His eager intellect ever sought and probed and tested all propositions laid before him, and I would join with my learned friend, the Advocate-General, in saying this, that although sometimes his methods gave the impression that he was in a hurry, it really was not that, but it was that his quick intellect and his intense legal acumen were capable of throwing aside all false reasonings and arriving at a true perception of the merits of a case far quicker than most of us who appeared before him.

We here, at the Bar, shall never forget the occasions when we have appeared before him and argued points on which he had his doubts. The lightning of his reasoning has flashed round us and none of us can forget it, but this I do say, never was a point put before him which was worthy of consideration that he did not test it and weigh it and consider it fully and deeply. We all hoped that his time on the Bench would be longer and we looked forward to his gaining a reputation as high as his great fellow-countryman who has left the Bench but is with us here—Sir S. Subrahmanya Aiyar. But his activities were transferred to another sphere. The work of Government is, of course, shrouded in mystery in that the personality that affects the various questions does not come before the public eye. But this we do know from those who came into contact with him officially, that he brought to bear on his work a patience and care and consideration and a detail of examination which showed how anxious he was to master the various administrative problems that came before him. That we do know from those who were with him.

If your Lordships will allow me a personal reminiscence, I would like to tell your Lordships the words he used to me the first time I saw him after his appointment to the Executive Council, and they were these :—'I am determined to justify my appointment.' My Lords, that sentiment was, I think, one that was worthy of him—to justify, to make just, to show that by care and zeal and diligence he was worthy of the great honour that had been granted to him, and is there one of us here from your Lordships down to the youngest of us, who has any doubt that if he had lived he would have fulfilled that hope and that desire on his part, fully absolutely and completely? His death, my Lords, is a great loss to this country, and a great sorrow to all, not only to those of his own race, but those like ourselves, for whom I must speak—Europeans who have worked and pleaded before him. In this loss we can only feel that we, who knew him well, have lost an open-hearted friend, one who was

ever ready to join hands with us and to meet us and to be glad to see us, and the country has lost a great benefactor, and the Crown has lost a faithful and brilliant servant.

The Chief Justice:—Mr. Advocate-General.—On behalf of my colleagues, I desire to associate myself with what you have said and with what Mr.Napier has said with reference to the sad and untimely death of Mr. Krishnaswami Iyer. The news of his death came to us early this morning as a great shock, though most of us were then not unprepared to hear the worst. I last saw him alive on the occasion of the State Entry of the King-Emperor into Delhi. He then appeared to be in good health. He seemed to be full of energy and vitality. As I talked to him that morning it certainly appeared that he had many years of usefulness before him. Providence, however, has ruled otherwise.

As you have reminded us, Mr. Advocate General, he has served the State in two very different capacities. He enjoyed the rare distinction—a distinction certainly without precedent, so far as an Indian is concerned—of having been a Judge of the Supreme Court of Judicature in Madras and a Member of the Council of the Governor of Madras. We are all thinking of him this morning, though mainly at any rate as a Judge of this court. His vigorous intellect, his wide and deep knowledge of the Law and his great capacity for work rendered him a tower of strength in this court. We could well have wished that we had not lost his services as a Judge after so short a term of office.

It would scarcely be fitting for me, sitting here, to attempt to express an opinion with reference to his work as a Member of the Council of the Governer of Madras. But I have very little doubt that his vigorous personality and his marvellous intellectual gifts and what the Advocate-General has described as his pluck and his exuberant energy enabled him to render services of the very highest value to his colleagues in the Council of the Governor. It has been suggested both by the Advocate-General and by Mr. Napier that, possibly, his manner was occasionally a little masterful. Sometimes, perhaps, he was in manner rather peremptory, but we all know that beneath an occasional hastiness and peremptoriness of manner there lay a very warm and kindly heart. I do not express any opinion with reference to the suggestion that he was sometimes, possibly, inclined to be a little masterful. He certainly did not belong to the type of men who suffered fools gladly, and it is possible he had

the defects of his qualities. I say nothing about them. I do not feel I am competent to express an opinion. I would rather speak of him as I knew him personally. When we were both Advocates together in this court, when he was an Advocate and I was a Judge, and when we were both Judges of the court together, our relations were always of the most cordial, and I may say affectionate, character.

The Advocate-General has referred to the many spheres of intellectual activity in which Mr. Krishnaswamy Iyer worked. He has referred to his work in connection with the University, he has referred to his work as a philanthropist, he has referred to his many and striking private virtues. I can add nothing to what the Advocate-General and to what Mr. Napier have said with so much eloquence and with so much feeling. I desire, on behalf of the Judges, to join the Advocate-General in tendering to the family of Mr. Krishnaswami Iyer an expression of our deep sympathy with them in their sad bereavement. We have all lost a great friend, we have lost a man of very unusual intellectual powers and of great gifts and a man who devoted all his strength and all his energy to the service of the profession of which he was so long an ornament, and after he ceased to be a member of that profession, to the service of the State. We all deeply deplore his loss.

CONTEMPORARY LEGAL LITERATURE.

In the November-December part of the *American Law Review* there appears a very learned article on "The Value of the Precedent" in which the writer states as follows:—

A precedent in law, in its fullest and best sense, is a decision, *i. e.*, a contested case arrived at after patient inquiry into all points bearing upon the doubtful question by an impartial Judge who stands between or above the contending parties. Any other kind of decision may be a precedent, but it would not be entitled to that high respect that is due to a decision of the character above described. The extrinsic elements that go to make a decision valuable as a precedent are these :—(1) Decisions upon actual cases and not upon abstract propositions have a value, being delivered with seriousness and honesty of purpose and a responsibility of deciding of property rights of two or more

persons. (2) A decision arrived at as the result of a contest and strong argument is sure to be free from mistakes, errors, fallacies and flaws. (3) Next in importance is the force and character of the Court or Judge that decides the case. This value is very much enhanced by the standing of the Judges who deliver the opinion. (4) We sometimes have the right to look to particular courts for excellence in particular branches of the law. This may arise from the history of the Court or of the times, the character of the community, or other reasons. The intrinsic elements which make a decision a valuable precedent or otherwise are these : The force of precedent is reserved for the proposition or rule of law necessarily involved in the decision of the case, whether that proposition be stated by the court broadly, narrowly, wrongly, or not at all. A case is to be regarded as a precedent when it furnishes rules that may be applied in settling the rights of parties. These rules are to be discovered in the opinions of the Judges and constitute the reasons for the decisions. The reason and spirit of cases make the law not the letter of the particular precedent. The generality of language used in opinion is always to b- restricted to the case before the Court and it is only authority to that extent. The reason, illustrations or references contained in the opinion of a court are not authority, not precedent, but only the points in judgment arising in the particular case before a Court. The reason of this is manifest. If the members of a Court agree only as to conclusion but differ widely as to the process in arriving at the conclusion, it is then the conclusion only and not the process which is the opinion of the Court and authority in other cases.

Speaking in general terms, therefore, it may be said that the doctrine of a case is to be arrived at by determining th *ratio decidendi* of the decision through a strict exclusion of all surplusage of language and illustration, and the value of the case as a precedent is restricted to the points necessarily embraced in the judgment. Equally divided opinion in a case weakens it as a precedent, except in cases of necessity as in the highest court of appeal (House of Lords) where an affirmance from necessity makes a precedent of full force. A decision which relies upon misunderstood and overruled cases or upon the authority of a text book which is not sustained by

the cases cited to sustain the text; a case of first impression and of course not supported by subsequent decisions and the experience of other courts; an *ex parte* case—all these are of more or less imparied value as precedents.

The existence of a dissenting opinion does not destroy the value of the majority's decision as a precedent.

BOOK REVIEWS.

The Indian Decisions of Old Series. Vols. I and II. Printed by the Law Printing House, Mount Road, Madras:—This is really a gigantic undertaking. The legal profession in India has been at a great disadvantage till now in not having had easy access to the very interesting and luminous reports consisting of the decisions of the Supreme Courts and the Sudder Dewanny Adawluts of the several provinces. In undertaking the publication, the publishers are rendering a great and signal service to the profession, the value of which it is impossible to overestimate. The printing and the get up, quite characteristic of the Law Printing House, leave nothing to be desired. Every volume contains a useful index to the contents. The two volumes that have been issued till now contain several of the Supreme Court Reports of Bengal, and we can confidently commend the publication to the profession.

The Indian Limitation Act: By Desai and Mogre. 3rd Edition, 1911. By the "Lawyer's Office," Girgaon.—This is a neat little commentary on the new Limitation Act. The principles are succinctly stated and the matter well arranged. The book will surely serve as a handbook for beginners in the Profession and Students of Law.

A Primer of Roman Law by W. A. HASTINGS KELKE, M. A. Published by Messrs. SWEET AND MAXWELL, LD.—This is a neat little primer on Roman Law The arrangement and the method in which the subject has been dealt with are excellent and as an elementary handbook it will be of great service to students of law. We commend it to law students.

A digest of English Civil Law: By Edward Jenks, M.A.,B.C.L. Book III—Law of property.

It is hardly necessary for us to say much in commendation of this book to students of law. Law students in India find a good deal of difficulty in understanding the technicalities of English land law and this publication which is only the first of a series of similar volumes on the subject will find the principles stated clearly and succinctly. The profession in India will also find the treatise to be of immense use to them in clearly understanding a difficult subject the necessity for which is being very often felt by even the most studious of practitioners. The book is printed in clear and bold type and it is a real pleasure to handle the book which we need hardly say is the first prerequisite to interest the redar in any publication.

Mew's Annual Digest of English Case Law, 1911.—Published by Messrs. Sweet and Maxwell, Ltd., 3, Chancery Lane, London and Messrs. Stevens & Sons, Ltd., 119-120, Chancery Lane.

It is needless for us to dwell anew on the utility of this publication. The Digest is for 1911 and should form a necessary appendage to the Revised Edition of Mew's Digest which has been brought up to 1910. This issue keeps up the high standard of excellence attained by its predecessors and is followed by a list of cases approved, overruled, etc., printed on one side of the paper with a view to facilitate the "noting up" of the cases.

Index of Cases 1904—1910: By A. N. Kant. Published by Messrs. Butterworth & Co., 10, 11 and 12, Bell Yard, Temple Bar, London, and by Messrs. Butterworth & Co., Ld., 8/2, Hastings Street, Calcutta. *7s. 6d.*

Mr. A. N. Kant has done well in bringing out a supplement to his "Index of English Cases Judicially Noticed" dealing with the cases noticed in the English Law Reports from 1904—1910. The supplement, it need hardly be added, proceeds on the same lines as his principal volume which noticed the cases from 1865 up to 1904. The supplement brings down the matter to 1910 and we are sure it will be of great help to practitioners.

Acknowledgments.

We beg to acknowledge receipt of the following publications:—

Index of Cases 1904-1910 by A. N. Kant published by Messrs. Butterworth & Co., Ltd., 8/2 Hastings Street, Calcutta. Price 7*s*. 6*d*.

Allahabad Law Journal for	February 1912.
Calcutta Law Journal	Do.
Calcutta Weekly Notes	Do.
Kathiawar Law Reports	Do.
Law Notes	Do.
Law Students' Journal	Do.
Punjab Law Reporter	Do.
The Law Journal	Do.
The Lawyer	Do.